

(4) Recommendation of program payment percentages for payment schedules.

(c) No delegation in the administration of this part to lower organizational levels will preclude the Chief from making any determinations under this part, re-delegating to other organizational levels, or from reversing or modifying any determination made under this part. The Chief may modify or waive a discretionary provision of this part with respect to contracts entered into under the Regional Conservation Partnership Program (RCPP), if the Chief determines that such an adjustment is necessary to achieve the purposes of EQIP. Consistent with section 1271C(c)(3) of the 2014 Act, the Chief may also waive the applicability of the Adjusted Gross Income (AGI) limitation in section 1001D(b)(2) of the Food Security Act of 1985 for program participants if the Chief determines that the waiver is necessary to fulfill RCPP objectives.

(d) NRCS may enter into agreements with other Federal or State agencies, Indian Tribes, conservation districts, units of local government, public or private organizations, and individuals to assist NRCS with implementation of the program in this part.

§ 1466.3 Definitions.

The following definitions will apply to this part and all documents issued in accordance with this part, unless specified otherwise:

Agricultural land means cropland, grassland, rangeland, pasture, and other agricultural land, on which agricultural and forest-related products or livestock are produced and resource concerns may be addressed. Other agricultural lands include cropped woodland, marshes, incidental areas included in the agricultural operation, and other types of agricultural land used for production of livestock.

Agricultural operation means a parcel or parcels of land whether contiguous or noncontiguous, which the producer is listed as the operator or owner/operator in the Farm Service Agency (FSA) record system, which is under the effective control of the producer at the time the producer applies for a contract, and which is operated by the pro-

ducer with equipment, labor, management, and production, forestry, or cultivation practices that are substantially separate from other operations.

Animal feeding operation (AFO) means an agricultural operation where animals are kept and raised in confined situations. AFOs congregate animals, feed, manure, dead animals, and production operations on a small land area. Feed is brought to the animals rather than the animals grazing or otherwise seeking feed in pastures, fields, or on rangeland. An AFO is a lot or facility (other than an aquatic animal production facility) where the following conditions are met:

(1) Animals have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period; and

(2) Crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.

Animal waste storage or treatment facility means a structural conservation practice, implemented on an AFO consistent with the requirements of a Comprehensive Nutrient Management Plan (CNMP) and Field Office Technical Guide (FOTG), which is used for storing, treating, or handling animal waste or byproducts, such as animal carcasses.

Applicant means a producer who has requested in writing to participate in EQIP.

At-risk species means any plant or animal species listed as threatened or endangered; proposed or candidate for listing under the Endangered Species Act; a species listed as threatened or endangered under State law or Tribal law on Tribal land; State or Tribal land species of conservation concern; or other plant or animal species or community, as determined by the State Conservationist, with advice from the State Technical Committee or Tribal Conservation Advisory Council, that has undergone, or is likely to undergo, population decline and may become imperiled without direct intervention.

Beginning farmer or rancher means a person, Indian Tribe, Tribal corporation, or legal entity who:

(1) Has not operated a farm or ranch, or NIPF, or who has operated a farm,

ranch, or NIPF for not more than ten consecutive years. This requirement applies to all members of an entity, who will materially and substantially participate in the operation of the farm or ranch.

(2) In the case of a contract with an individual, individually, or with the immediate family, material and substantial participation requires that the individual provide substantial day-to-day labor and management of the farm or ranch, consistent with the practices in the county or State where the farm is located.

(3) In the case of a contract with an entity or joint operation, all members must materially and substantially participate in the operation of the farm or ranch. Material and substantial participation requires that each of the members provide some amount of the management, or labor and management necessary for day-to-day activities, such that if each of the members did not provide these inputs, operation of the farm or ranch would be seriously impaired.

Chief means the Chief of NRCS, United States Department of Agriculture (USDA), or designee.

Comprehensive Nutrient Management Plan means a conservation plan that is specifically for an AFO. A CNMP identifies conservation practices and management activities which, when implemented as part of a conservation system, will manage sufficient quantities of manure, waste water, or organic by-products associated with a waste management facility. A CNMP incorporates practices to use animal manure and organic by-products as a beneficial resource while protecting all natural resources including water and air quality associated with an AFO. A CNMP is developed to assist an AFO owner/operator in meeting all applicable local, Tribal, State, and Federal water quality goals or regulations. For nutrient impaired stream segments or water bodies, additional management activities or conservation practices may be required by local, Tribal, State, or Federal water quality goals or regulations.

Conservation benefit means the improved condition of a natural resource concern resulting from the implementation of a conservation practice.

Conservation district means any district or unit of State, Tribal, or local government formed under State, Tribal, or territorial law for the express purpose of developing and carrying out a local soil and water conservation program. Such district or unit of government may be referred to as a “conservation district,” “soil conservation district,” “soil and water conservation district,” “resource conservation district,” “land conservation committee,” “natural resource district,” or similar name.

Conservation Innovation Grants (CIG) means competitive grants made under EQIP to individuals, Indian Tribes, and governmental and nongovernmental organizations to stimulate and transfer innovative technologies and approaches, to leverage Federal funds, and to enhance and protect the environment in conjunction with agricultural production and forest management.

Conservation practice means one or more conservation improvements and activities, including structural practices, land management practices, vegetative practices, forest management practices, and other improvements that achieve the program purposes, including such items as CNMPs, agricultural energy management plans, dryland transition plans, forest management plans, integrated pest management, and other plans or activities determined acceptable by the Chief. Approved conservation practices are listed in the NRCS FOTG.

Contract means a legal document that specifies the rights and obligations of any participant accepted into the program. An EQIP contract is a binding agreement for the transfer of assistance from USDA to the participant to share in the costs of implementing conservation practices.

Cost-effectiveness means the least costly option for achieving a given set of conservation objectives to address a resource concern.

Enrolled land means the land area identified and included in the program contract at the time when funds have been obligated.

EQIP plan of operations means the document that identifies the location and timing of conservation practices

that the participant agrees to implement on eligible land enrolled in the program in order to address the priority resource concerns, optimize environmental benefit, and address program purposes as defined in §1466.1. The EQIP plan of operations is part of the EQIP contract.

Estimated income foregone means an estimate of the net income loss associated with the adoption of a conservation practice. Along with other estimated incurred costs, foregone income is one of the costs associated with practice implementation as recorded in a payment schedule. NRCS calculates foregone income as the average annual net income (\$/unit/year) lost from implementing a conservation practice which results in a change in land use or land taken out of production or the opportunity cost associated with the adoption of a conservation practice. Foregone income will not include losses of income due to disaster or other events unrelated to the conservation practice such as risk associated with agricultural production.

Field office technical guide (FOTG) means the official local NRCS source of resource information and interpretations of guidelines, criteria, and requirements for planning and implementation of conservation practices. It contains detailed information on the quality standards to achieve conservation of soil, water, air, plant, energy, and animal resources applicable to the local area for which it is prepared.

Forest management plan means a site-specific plan that is prepared by a professional resource manager, in consultation with the participant, and is approved by the State Conservationist. Forest management plans may include a forest stewardship plan, as specified in section 5 of the Cooperative Forestry Assistance Act of 1978 (16 U.S.C. 2103a); another practice plan approved by the State Forester or Indian Tribe; or another plan determined appropriate by the State Conservationist. The plan is intended to comply with Federal, State, Tribal, and local laws, regulations, and permit requirements.

Habitat development means the application of conservation practices to establish, improve, protect, enhance, or restore the conditions of the land for

the specific purpose of improving conditions for fish and wildlife.

Historically underserved producer means a person, joint operation, legal entity, or Indian Tribe who is a beginning farmer or rancher, socially disadvantaged farmer or rancher, or limited resource farmer or rancher.

Indian land means:

(1) Land held in trust by the United States for individual Indians or Indian Tribes; or

(2) Land, the title to which is held by individual Indians or Indian Tribes subject to Federal restrictions against alienation or encumbrance; or

(3) Land which is subject to rights of use, occupancy and/or benefit of certain Indian Tribes; or

(4) Land held in fee title by an Indian, Indian family, or Indian Tribe.

Indian Tribe means any Indian Tribe, band, nation, pueblo, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Integrated pest management means a sustainable approach to managing pests by combining biological, cultural, physical, and chemical tools in a way that minimizes economic, health, and environmental risks.

Joint operation means, as defined in part 7 CFR 1400, a general partnership, joint venture, or other similar business organization in which the members are jointly and severally liable for the obligations of the organization.

Legal entity means, as defined in 7 CFR 1400, an entity created under Federal or State law that:

(1) Owns land or an agricultural commodity, product, or livestock; or

(2) Produces an agricultural commodity, product, or livestock.

Lifespan means the period of time during which a conservation practice or activity should be maintained and used for the intended purpose.

Limited resource farmer or rancher means either:

(1) Individual Producer:

(i) A person with direct or indirect gross farm sales not more than the current indexed value in each of the previous two fiscal years (adjusted for inflation using Prices Paid by Farmer Index as compiled by National Agricultural Statistical Service), and

(ii) Has a total household income at or below the national poverty level for a family of four, or less than 50 percent of county median household income in each of the previous two years (to be determined annually using Commerce Department Data), or

(2) A legal entity or joint operation if all individual members independently qualify under paragraph (1) of this definition.

Liquidated damages means a sum of money stipulated in the EQIP contract that the participant agrees to pay NRCS if the participant fails to adequately complete the terms of the contract. The sum represents an estimate of the technical assistance expenses incurred to service the contract, and reflects the difficulties of proof of loss and the inconvenience or nonfeasibility of otherwise obtaining an adequate remedy.

Livestock means all domesticated animals produced on farms or ranches, as determined by the Chief.

Livestock production means farm or ranch operations involving the production, growing, raising, or reproduction of domesticated livestock or livestock products.

Local working group means the advisory body as defined in part 610 of this title.

National Organic Program means the national program established under the Organic Foods Production Act of 1990 (7 U.S.C. 6501 *et seq.*), administered by the Agricultural Marketing Service, which regulates the standards for any farm, wild crop harvesting, or handling operation that wants to sell an agricultural product as organically produced.

National priorities means resource issues identified by the Chief, with advice from other Federal agencies, Indian Tribes, and State Conservationists, which will be used to determine the distribution of EQIP funds and guide local EQIP implementation.

Natural Resources Conservation Service is an agency of USDA, which has re-

sponsibility for administering EQIP using the funds, facilities, and authorities of the CCC.

Nonindustrial private forest land means rural land, as determined by the Secretary, that has existing tree cover or is suitable for growing trees; and is owned by any nonindustrial private individual, group, association, corporation, Indian Tribe, or other private legal entity that has definitive decision-making authority over the land.

Operation and maintenance (O&M) means work performed by the participant to keep the applied conservation practice functioning for the intended purpose during the conservation practice lifespan. Operation includes the administration, management, and performance of nonmaintenance actions needed to keep the completed practice functioning as intended. Maintenance includes work to prevent deterioration of the practice, repairing damage, or replacement of the practice to its original condition if one or more components fail.

O&M agreement means the document that, in conjunction with the EQIP plan of operations, specifies the operation and maintenance responsibilities of the participant for conservation practices installed with EQIP assistance.

Organic system plan (OSP) means a management plan for organic production or for an organic handling operation that has been agreed to by the producer or handler and the certifying agent. The OSP includes all written plans that govern all aspects of agricultural production or handling as required under the Organic Foods Production Act of 1990 (7 U.S.C. 6501 *et seq.*).

Participant means an applicant that has entered into an EQIP contract who incurs the cost of practice implementation, will receive payment or is responsible for implementing the terms and conditions of an EQIP contract.

Payment means financial assistance provided to the participant based on the estimated costs incurred in performing or implementing conservation practices, including costs for: planning, design, materials, equipment, installation, labor, management, or training,

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as well as the estimated income foregone by the producer for designated conservation practices.

Person means, as defined in 7 CFR part 1400, an individual, natural person, and does not include a legal entity.

Priority resource concern means a natural resource concern that is identified by the State Conservationist, in consultation with the State Technical Committee or Tribal Conservation Advisory Council, as a priority for a State, Tribal, local, geographic area, or watershed level.

Producer means a person, legal entity, Indian Tribe, or joint operation who NRCS determines is engaged in agricultural production or forestry management on the agricultural operation.

Resource concern means a specific natural resource problem that represents a significant concern in a State or region and is likely to be addressed through the implementation of conservation practices or activities by producers according to NRCS technical standards.

Socially disadvantaged farmer or rancher means a producer who is a member of a group whose members have been subjected to racial or ethnic prejudices without regard to its members' individual qualities. For an entity, at least 50 percent ownership in the business entity must be held by socially disadvantaged individuals.

State Conservationist means the NRCS employee authorized to implement EQIP and direct and supervise NRCS activities in a State, Caribbean Area, or Pacific Island Areas.

State Technical Committee means a committee established by NRCS in a State pursuant to 7 CFR part 610, subpart C.

Structural practice means a conservation practice, including a vegetative practice, that involves establishing, constructing, or installing a site-specific measure to conserve and protect a resource from degradation, or improve soil, water, air, or related natural resources in the most cost-effective manner. Examples include, but are not limited to, animal waste management facilities, terraces, grassed waterways, tailwater pits, livestock water developments, contour grass strips, filter strips, critical area plantings, tree

plantings, establishment or improvement of wildlife habitat, and capping of abandoned wells.

Technical assistance means technical expertise, information, training, education, and tools necessary for a producer to be able to successfully implement, operate, and maintain conservation practices to ensure the conservation of natural resources on land active in agricultural, forestry, or related uses. These technical services include the following:

(1) Technical services provided directly to farmers, ranchers, Indian Tribes, and other eligible entities, such as conservation planning, technical consultation, and assistance with design and implementation of conservation practices; and

(2) Technical infrastructure, including activities, processes, tools, and agency functions needed to support delivery of technical services, such as technical standards, resource inventories, training, education, data, technology, monitoring, and effects analyses.

Technical service provider (TSP) means an individual, private-sector entity, Indian Tribe, or public agency either:

(1) Certified by NRCS pursuant to 7 CFR part 652 and placed on the approved list to provide technical services to participants; or

(2) Selected by the Department to assist the Department in the implementation of conservation programs covered by this part through a procurement contract, contributions agreement, or cooperative agreement with the Department.

Tribal Conservation Advisory Council means, in lieu of or in addition to forming a Tribal conservation district, an Indian Tribe may elect to designate an advisory council to provide input on NRCS programs and the conservation needs of the Tribe and Tribal producers. The advisory council may be an existing Tribal committee or department, and may also constitute an association of member Tribes organized to provide direct consultation to NRCS at the State, regional, and national levels to provide input on NRCS rules, policies, and programs and their impacts on Tribes.

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Veteran farmer or rancher means a producer who meets the definition in section 2501(e) of the Food, Agriculture, Conservation, and Trade Act of 1990, as amended (7 U.S.C. 2279(e)).

Wildlife means non-domesticated birds, fishes, reptiles, amphibians, invertebrates, and mammals.

Wildlife habitat means the aquatic and terrestrial environments required for fish and wildlife to complete their life cycles, providing air, food, cover, water, and spatial requirements.

§ 1466.4 National priorities.

(a) The following national priorities, consistent with statutory resource concerns that include soil quality, water quality and quantity, plants, energy, wildlife habitat, air quality, and related natural resource concerns, may be used in EQIP implementation:

(1) Reductions of nonpoint source pollution, such as nutrients, sediment, pesticides, or excess salinity in impaired watersheds consistent with total maximum daily loads (TMDL) where available; the reduction of surface and groundwater contamination; and the reduction of contamination from agricultural sources, such as animal feeding operations;

(2) Conservation of ground and surface water resources;

(3) Reduction of emissions, such as particulate matter, nitrogen oxides, volatile organic compounds, and ozone precursors and depleters that contribute to air quality impairment violations of National Ambient Air Quality Standards;

(4) Reduction in soil erosion and sedimentation from unacceptable levels on agricultural land;

(5) Promotion of at-risk species habitat conservation including development and improvement of wildlife habitat; and

(6) Energy conservation to help save fuel, improve efficiency of water use, maintain production, and protect soil and water resources by more efficiently using fertilizers and pesticides.

(b) In consultation with other Federal agencies and Indian Tribes, NRCS may undertake periodic reviews of the national priorities and the effects of program delivery at the State and local

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levels to adapt the program to address emerging resource issues. NRCS may:

(1) Use the national priorities to guide the allocation of EQIP funds to the NRCS State offices;

(2) Use the national priorities in conjunction with State, Indian Tribes, and local priorities to assist with prioritization and selection of EQIP applications; and

(3) Periodically review and update the national priorities utilizing input from the public, Indian Tribes, other Federal and State agencies, and affected stakeholders to ensure that the program continues to address priority resource concerns.

§ 1466.5 Outreach activities.

NRCS will establish program outreach activities at the national, State, Tribal, and local levels in order to ensure that producers whose land has environmental problems and priority resource concerns are aware and informed that they may be eligible to apply for program assistance. Special outreach will be made to eligible producers with historically low participation rates, including but not restricted to, limited resource, socially disadvantaged, small-scale, or beginning farmers or ranchers, veteran farmers or ranchers, Indian Tribes, Alaska Natives, and Pacific Islanders. NRCS provides outreach so as not to limit producer participation because of size or type of operation, or production system, including small-scale, specialty crop, and organic production.

§ 1466.6 Program requirements.

(a) Program participation is voluntary. An applicant must develop an EQIP plan of operations for the eligible land to be treated that serves as the basis for the EQIP contract. Under EQIP, NRCS provides its participants with technical assistance and payments to plan and apply needed conservation practices.

(b) To be eligible to participate in EQIP, an applicant must:

(1) Be in compliance with the highly erodible land and wetland conservation provisions found at part 12 of this title;

(2) Must be a producer as determined by NRCS;